

REMARKS

In the present Amendment, Applicants have canceled claims 29, 31, and 43-45, without prejudice or disclaimer of the subject matter thereof. Applicants have proposed to amend claims 27, 42, and 46 to more appropriately define the invention. Upon entry of the Amendment, claims 27, 28, 32, 42, and 46 would be pending, with claims 33-41 and 47-52 being withdrawn from consideration for examination on the merits as drawn to a non-elected species.

In the Final Office Action, the Examiner rejected claims 27-29, 31, 32, and 42-46 under 35 U.S.C. § 102(e) as being anticipated by Metz et al. (U.S. Patent No. 5,666,293). The rejection of claims 29, 31, and 43-45 is rendered moot in view of their cancellation. Applicants respectfully traverse the rejection of claims 27, 28, 32, 42, and 46 for the following reasons.

In order to properly anticipate Applicants' claimed invention under 35 U.S.C. §102, each and every element of the claim in issue must be found, "either expressly or inherently described, in a single prior art reference." "The identical invention must be shown in as complete detail as is contained in the . . . claim. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989)." See M.P.E.P. § 2131, 8th ed., 2001.

The present invention is in general directed to a downloading apparatus for a broadcast receiver. In particular, claim 27 recites a downloading apparatus for a broadcast receiver that includes, *inter alia*, "a storage element which stores a control program, said control program controlling the operation of a video program corresponding to said video program signal, wherein the storage element further

comprises a random access memory (RAM) for temporarily storing a downloaded control program, and a non-volatile random access memory (NVRAM), including a first domain, a second domain for storing a control program, a third domain for storing a downloading program for controlling a download procedure, wherein during the download procedure the control program stored in the second domain is updated, and a fourth domain for storing a bootstrap program, wherein the bootstrap program controls an initial boot routine, wherein the first domain stores one of a version number of the control program stored in the second domain or a predetermined number indicating that the download procedure for updating the control program in the second domain was suspended due to a power failure or a signal transmission error, and wherein the initial boot routine includes checking whether or not a value stored in the first domain is the predetermined number and, when the value is the predetermined number, automatically updating the control program."

On the other hand, Metz et al. discloses set-top terminals that may be used in broadband broadcast networks. Referring to Fig. 7, a memory in a digital entertainment terminal (DET) 102 includes a ROM 115, a non-volatile RAM 121, and a DRAM 122. Fig. 9 of Metz et al. further shows in flow chart the method of DET 102. First, DET 102 is initiated, during which "[a] DET microprocessor 110 calls and executes [an] upgrade routine from memory (step S3)." Col. 35, lines 29-35. After initialization, "DET 102 proceeds to check the version number for the particular type of set-top terminal 100 being broadcast in the carousel data stream (step S4). . . . The DET microprocessor 110 compares the operating system version number in the network table with [an] operating system version number stored in its associated system memory 120 to

determine whether or not they match. If they match, an operating system upgrade is not necessary at this time. . . . However, if . . . [they] do not match, then the DET proceeds to extract data, etc. to upgrade the operating system.” Col. 36, lines 17-44.

From the above description of the DET and the method thereof, it is clear that Metz et al. does not teach at least “a first domain, . . . wherein the first domain stores one of a version number of the control program stored in the second domain or a predetermined number indicating that the download procedure for updating the control program in the second domain was suspended due to a power failure or a signal transmission error,” as recited in claim 27. Consequently, Metz et al. also fails to teach at least “a fourth domain for storing a bootstrap program, wherein the bootstrap program controls an initial boot routine, . . . wherein the initial boot routine includes checking whether or not a value stored in the first domain is the predetermined number and, when the value is the predetermined number, automatically updating the control program,” as recited in claim 27.

Therefore, claim 27 is patentable over Metz et al. Claims 28 and 32, which depend from claim 27, are also patentable over Metz et al. at least because of their dependency from an allowable base claim.

In addition, claim 42 recites a method for downloading a control program from a broadcast signal in a digital broadcast receiver that includes, *inter alia*, “writing a predetermined value in a version domain of the non-volatile random access memory; . . . examining the version domain of the non-volatile random access memory during an initial boot routine controlled by a bootstrap program; and restarting the downloading program stored in the non-volatile random access memory for recovering the control

program when the examined version domain of the non-volatile random access memory includes the predetermined value.” For reasons already set forth in the above, Metz et al. fails to teach at least these elements. Therefore, claim 42, and claim 46, which depends from claim 42, are patentable over Metz et al.

In view of the foregoing remarks, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of the pending claims 27, 28, 32, 42, and 46.

Applicants respectfully requests that this Amendment under 37 C.F.R. § 1.116 be entered by the Examiner, placing claims 27, 28, 32, 42, and 46 in condition for allowance. Applicants submit that the proposed amendments of claims 27, 42, and 46 do not raise new issues or necessitate the undertaking of any additional search of the art by the Examiner, since all of the elements and their relationships claimed were either earlier claimed or inherent in the claims examined. Therefore, this Amendment should allow for immediate action by the Examiner.

Finally, Applicants submit that the entry of the Amendment would place the application in better form for appeal, should the Examiner continue to dispute the patentability of the pending claims.

Applicants, therefore, request the entry of this Amendment, the Examiner's reconsideration of the application, and the timely allowance of the pending claims.

If any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this response, and not requested by attachment, such extension is hereby requested. If there are any fees due under 37 C.F.R. § 1.16 or 1.17 that are not enclosed, including

any fees required for an extension of time under 37 C.F.R. § 1.136, please charge those fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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GARRETT & DUNNER, L.L.P.

Dated: May 17, 2004

By: \_\_\_\_\_

Qingyu Yin\*

\* With limited recognition under 37 C.F.R. § 10.9(b).



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Expires: June 6, 2004

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